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		EXAMINER		
		WILSON, YOLANDA L		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/800,307	Applicant(s) MATENA ET AL.	
	Examiner Yolanda L. Wilson	Art Unit 2113	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 May 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34, 74, 114 and 115 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-12, 19, 21-34, 114 and 115 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6 and 74 is/are rejected.
- 7) ☒ Claim(s) 3, 13-18 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 3,13-18,20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,2,4,5,6,74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chandra et al. (USPN 6594779B1) in view of Ferstl et al. (USPN 7185046B2). As per claims 1 and 74, Chandra et al. discloses at least one node, each node including node controller means for starting, stopping and detecting a failure of a process on the node in column 5, lines 36-51; a plurality of application controllers wherein: each application controller includes control means for managing at least one application according to an execution model in column 5, lines 36-51; and a first application controller including management means for managing a different type of software from a second application controller in column 5, lines 36-51; and an execution controller, the execution controller including execution control means for maintaining status information of processes started by the node controller executing on the at least one

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node and maintaining status and availability information of the at least one node in column 5, lines 56-63.

Chandra et al. fails to explicitly state application controller determining distribution of at least one application according to an execution model.

Ferstl et al. discloses this limitation in column 12, lines 10-24.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have an application controller determining distribution of at least one application according to an execution model. A person of ordinary skill in the art would have been motivated to have an application controller determining distribution of at least one application according to an execution model because the application determines how an application's processes are executed.

4. As per claim 2, Chandra et al. discloses including a plurality of nodes and wherein the execution controller means include means for maintaining status and availability information of the plurality of nodes in column 5, lines 56-63.

Chandra et al. discloses a plurality of nodes, each node including node controller means for starting, stopping and detecting a failure of a process on the node in column 5, lines 36-51; a plurality of application controllers wherein: each application controller includes control means for managing at least one application according to an execution model in column 5, lines 36-51; and a first application controller including management means for managing a different type of software from a second application controller in column 5, lines 36-51; and an execution controller, the execution controller including execution control means for maintaining status information of processes started by the

node controller executing on the at least one node and maintaining status and availability information of the at least one node in column 5, lines 56-63.

Chandra et al. fails to explicitly state application controller determining distribution of at least one application according to an execution model.

Ferstl et al. discloses this limitation in column 12, lines 10-24.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have an application controller determining distribution of at least one application according to an execution model. A person of ordinary skill in the art would have been motivated to have an application controller determining distribution of at least one application according to an execution model because the application determines how an application's processes are executed.

5. As per claim 4, Chandra et al. discloses at least one node, each node including a node controller configured to start, stop and detect a failure of a process on the node in column 5, lines 36-51; a plurality of application controllers wherein: each application controller is configured to manage at least one application according to an execution model in column 5, lines 36-51; and a first application controller configured to manage applications according to an execution model that is different from the execution model of the applications managed by a second application controller in column 5, lines 36-51; and an execution controller, the execution controller configured to: maintain status information of processes started by the node controller executing on the at least one node; and maintain status and availability information of the at least one node in column 5, lines 56-63.

Chandra et al. fails to explicitly state application controller determining distribution of at least one application according to an execution model.

Ferstl et al. discloses this limitation in column 12, lines 10-24.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have an application controller determining distribution of at least one application according to an execution model. A person of ordinary skill in the art would have been motivated to have an application controller determining distribution of at least one application according to an execution model because the application determines how an application's processes are executed.

6. As per claim 5, Chandra et al. discloses including a plurality of nodes and wherein the execution controller maintains status and availability information of the plurality of nodes in column 5, lines 56-63.

Chandra et al. discloses at least one node, each node including node controller means for starting, stopping and detecting a failure of a process on the node in column 5, lines 36-51; a plurality of application controllers wherein: each application controller includes control means for managing at least one application according to an execution model in column 5, lines 36-51; and a first application controller including management means for managing a different type of software from a second application controller in column 5, lines 36-51; and an execution controller, the execution controller including execution control means for maintaining status information of processes started by the node controller executing on the at least one node and maintaining status and availability information of the at least one node in column 5, lines 56-63.

Chandra et al. fails to explicitly state application controller determining distribution of at least one application according to an execution model.

Ferstl et al. discloses this limitation in column 12, lines 10-24.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have an application controller determining distribution of at least one application according to an execution model. A person of ordinary skill in the art would have been motivated to have an application controller determining distribution of at least one application according to an execution model because the application determines how an application's processes are executed.

7. As per claim 6, Chandra et al. fails to explicitly state a first application controller is on a first node and a second application controller is on a second node.

Ferstl et al. discloses this limitation in column 10, lines 41-48.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a first application controller is on a first node and a second application controller is on a second node. A person of ordinary skill in the art would have been motivated to have a first application controller is on a first node and a second application controller is on a second node because the application determines how an application's processes are executed on more than one device.

Chandra et al. discloses at least one node, each node including node controller means for starting, stopping and detecting a failure of a process on the node in column 5, lines 36-51; a plurality of application controllers wherein: each application controller includes control means for managing at least one application according to an execution

model in column 5, lines 36-51; and a first application controller including management means for managing a different type of software from a second application controller in column 5, lines 36-51; and an execution controller, the execution controller including execution control means for maintaining status information of processes started by the node controller executing on the at least one node and maintaining status and availability information of the at least one node in column 5, lines 56-63.

***Allowable Subject Matter***

8. Claims 7-12,19,21-34,114,115 allowed.

***Response to Arguments***

9. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. Please see the rejection above.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of




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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yolanda L. Wilson whose telephone number is (571) 272-3653. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Yolanda L. Wilson  
Primary Examiner  
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